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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1304

Filed: 4 October 2016

North Carolina Industrial Commission, No. 13-703221

SANDRA WATSON, Employee, Plaintiff,

v.

JOHNSTON COUNTY EMERGENCY SERVICES, Employer, SELF-INSURED,  
Carrier (KEY RISK INSURANCE COMPANY, Servicing Agent), Defendant.

Appeal by plaintiff from opinion and award entered 24 July 2015 and order entered 1 October 2015 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 May 2016.

*Hardison & Cochran, PLLC, by J. Jackson Hardison, for plaintiff-appellant.*

*Teague Campbell Dennis & Gorham, LLP, by Dayle A. Flammia and Lindsay A. Underwood, for defendant-appellee.*

DIETZ, Judge.

Plaintiff Sandra Watson fell while on the job and injured her shoulder, wrist, and hand. She experienced intense, ongoing pain from her injuries as a result of a chronic pain condition. Watson had a history of depression due to tragic circumstances in her past and suffered from migraines. She brought a workers' compensation claim seeking benefits for her chronic pain. She also sought benefits

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for her depression and migraines on the grounds that her work-related injury caused or exacerbated those medical conditions.

The Industrial Commission awarded her benefits for her injury and resulting chronic pain, but denied compensation for the depression and migraines. It also found that Watson's disability ended on 30 October 2013, when her treating physician released her to return to work. After the Commission issued its opinion and award, Watson sought rehearing to introduce additional evidence from her physicians showing that she remained disabled. The Commission denied her request.

We affirm. The Commission properly considered the testimony of her physician concerning her return to work, which was in the record before the Commission when it ruled. The Commission also was well within its sound discretion to deny Watson's request for rehearing and to submit new evidence which Watson could have sought to introduce before the Commission ruled. Finally, the Commission's decision not to credit Watson's experts, and to find that she failed to show her depression and migraines were caused or exacerbated by her work-related injury, is supported by competent evidence in the record. Under the applicable standard of review, those findings are binding on appeal. Accordingly, we reject Watson's arguments and affirm the Commission's opinion and award.

### **Facts and Procedural History**

On 26 November 2012, Plaintiff Sandra Watson, an Emergency Medical Technician with Defendant Johnston County Emergency Services, responded to an automobile accident. When she arrived at the scene of the accident, she saw an injured person in a field just off the road. As she made her way through a ditch separating the field from the road, Watson fell, rolling onto her left shoulder and injuring her left hand, wrist, and thumb.

Watson sought treatment for her injuries, but over the ensuing months, she continued to experience a disproportionate amount of pain, and she was ultimately diagnosed with Complex Regional Pain Syndrome (CRPS). As her pain persisted, she also began to exhibit symptoms of potential mental health issues, which prompted physicians treating her for her pain to recommend that she see a psychiatrist. Watson did so, and her psychiatrist began treating her for depression.

This was not the first time Watson had been diagnosed with, and treated for, depression. Watson previously was the victim of a violent assault. Following the attack, Watson suffered severe depression. She was diagnosed with PTSD and prescribed anti-depressant medication. Then, years later, Watson was again treated for depression after she unexpectedly encountered her attacker following his release from prison.

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Along with the pain from her injuries and her depression, Watson also began to experience migraines after her injuries. Again, this was not the first time Watson experienced migraines; she had endured a long struggle with migraine headaches over the years.

In February 2013, Watson filed a workers' compensation claim seeking compensation for her chronic pain from her workplace injuries, as well as compensation for her depression and migraines. Following a hearing, the deputy commissioner determined that all of Watson's claimed injuries were compensable, including her depression and migraines. Defendant Johnston County Emergency Services appealed to the Full Commission.

The Full Commission affirmed in part and reversed in part, concluding that Watson had failed to show a causal connection between her workplace injury and her depression and migraines. The Commission also determined that Watson was entitled to disability benefits only through 30 October 2013.

Watson filed a motion for reconsideration on 4 August 2015. One week later, on 11 August 2015, Watson filed a motion to submit additional evidence, seeking to introduce doctor's notes from two of her treating physicians that recommended additional work restrictions. The Commission denied both motions in an order entered 16 September 2015. Watson timely appealed the Commission's opinion and award and its denial of her two post-award motions.

### **Analysis**

Watson raises three issues on appeal: (1) whether the Commission's conclusion that Watson failed to meet her burden of proving disability beyond 30 October 2013 constitutes reversible error; (2) whether the Commission abused its discretion by denying her 4 and 11 August 2015 motions; and (3) whether the Commission erroneously concluded that she had failed to meet her burden of proof to establish that her depression and migraines were causally related to her CRPS. We address each of these issues in turn.

#### **I. Conclusion on Period of Disability**

Watson first challenges the Commission's conclusion that her disability ended on 30 October 2013. We review an opinion and award of the Industrial Commission "only to determine whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law." *Medlin v. Weaver Cooke Constr., LLC*, 367 N.C. 414, 423, 760 S.E.2d 732, 738 (2014). "The Commission's conclusions of law are reviewed *de novo*." *Burley v. U.S. Foods, Inc.*, 368 N.C. 315, 317, 776 S.E.2d 832, 834, *reh'g denied*, \_\_ N.C. \_\_, 778 S.E.2d 435 (2015).

Watson does not dispute that the Commission made findings that support this conclusion. In deposition testimony on 20 November 2013, Watson's treating physician testified that on 30 October 2013 he released Watson "to administrative

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desk work with no pushing, pulling, or lifting more than five pounds.” The Commission, relying on this testimony, found that Watson’s disability ended on 30 October 2013.

Watson argues that the Full Commission was barred from considering this undisputed fact in its opinion and award because her treating physician did not release her to return to work until *after* her hearing before the deputy commissioner. Watson relies on this Court’s decision in *Carothers v. Ti-Caro*, 83 N.C. App. 301, 350 S.E.2d 95 (1986). In *Carothers*, this Court held that in reviewing a workers’ compensation claim, “[t]he Commission is concerned with conditions as they exist prior to and at the time of the hearing.” 83 N.C. App. at 305, 350 S.E.2d at 97. The Court emphasized that “[n]othing in the statute contemplates or authorizes an anticipatory finding by the Commission.” *Id.* at 306, 350 S.E.2d at 98.

Watson contends that the phrase “at the time of the hearing” means that the Full Commission cannot consider in its opinion and award any evidence that arises after the hearing before the deputy commissioner. But cases following *Carothers* have clarified that it only bars “anticipatory findings,” meaning findings that speculate about “future circumstances.” *Pait v. Se. Gen. Hosp.*, 219 N.C. App. 403, 409, 724 S.E.2d 618, 624 (2012). *Carothers* does not bar the Commission from considering additional evidence of a claimant’s injuries “as they presently exist.” *Id.*

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Here, because of scheduling changes for depositions—many at Watson’s request—the deposition of her treating physician did not occur until the month after her hearing before the deputy commissioner. But Watson does not dispute that this deposition testimony was taken as part of her workers’ compensation case, was submitted to and considered by the deputy commissioner in reaching her initial ruling, and was contained in the administrative record reviewed by the Full Commission before issuing its opinion and award. Thus, that testimony was not “anticipatory” or “speculative.” It was the Commission’s finding of the state of Watson’s injuries “as they presently exist[ed].” *Pait*, 219 N.C. App. at 409, 724 S.E.2d at 624.

In sum, at the time the Full Commission issued its opinion and award, Watson’s treating physician already had released her to return to work beginning 30 October 2013. Watson does not dispute this fact and, other than her claim that the evidence was impermissible under *Carothers*, asserts no reason for why her disability continued beyond the date her treating physician released her to return to work. Accordingly, the Commission did not err in concluding that Watson’s disability ended on 30 October 2013.

## **II. Denial of Post-Award Motions**

Watson next argues that the Commission abused its discretion by denying her motion for reconsideration and motion to submit additional evidence after it had

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issued its opinion and award. Both of these post-award motions are reviewed for abuse of discretion. *Beard v. WakeMed*, 232 N.C. App. 187, 193, 753 S.E.2d 708, 712 (2014); *Moore v. Davis Auto Serv.*, 118 N.C. App. 624, 629, 456 S.E.2d 847, 851 (1995). Under this narrow standard of review, this Court cannot overturn a ruling by the Commission unless its decision “is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.” *Beard*, 232 N.C. App. at 193, 753 S.E.2d at 712–13.

Here, Watson sought to introduce new evidence from two of her physicians who examined her again after the Commission entered its opinion and award and, as a result of those new examinations, updated their proposed work restrictions. Watson argues that the Commission should have heard this purportedly new evidence because it was necessary, in light of the Commission’s finding that Watson had been released to return to work, to show that she nevertheless remained disabled.

But this Court repeatedly has held that the Commission need not reopen a proceeding or reconsider its ruling based on “a new opinion about an old condition,” which is precisely what Watson offered as her “new evidence” here. *See, e.g., Wall v. N.C. Dep’t of Human Res.*, 99 N.C. App. 330, 333, 393 S.E.2d 109, 111 (1990); *Gruppen v. Furniture Indus.*, 28 N.C. App. 119, 121, 220 S.E.2d 201, 202 (1975). Indeed, Watson does not provide any reason why she could not have secured this testimony and offered it *before* the Commission entered its opinion and award; after all, the

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testimony was intended to address Watson's release to return to work, and that occurred in October 2013, nearly two years before the Commission issued its opinion and award. Accordingly, Watson has not shown that the Commission's denials of her motion for rehearing and motion to submit additional evidence were an abuse of discretion.

**III. Rejection of Claims for Depression and Migraines**

Finally, Watson challenges the Commission's determination that her depression and migraines were not causally related to her primary workplace injury. As noted above, our review is limited to determining whether the Commission's findings are supported by any competent evidence and whether those findings, in turn, support the Commission's conclusions of law. *Medlin*, 367 N.C. at 423, 760 S.E.2d at 738.

Here, there is at least some competent evidence supporting the Commission's findings on causation. With respect to Watson's depression, one of Watson's own experts testified that Watson had a number of other conditions that can cause depression, such as the past assault and her resulting trauma, weight concerns, and a current abusive relationship. Both of Watson's experts relied heavily on Watson's own explanation of her past medical history and did little to examine her history with depression and the events that caused it. Indeed, one of Watson's experts conceded that knowing more about Watson's history of depression and its causes would have

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helped him in formulating his opinion had he had access to and an opportunity to discuss that information with Watson.

These weaknesses in the underlying evaluation and reasoning of Watson's experts are sufficient to permit the Commission, in its role as fact finder, to discredit their opinions that Watson's fall and resulting chronic pain caused or exacerbated her depression. *See Hassell v. Onslow Cty. Bd. of Educ.*, 362 N.C. 299, 306, 661 S.E.2d 709, 715 (2008). Accordingly, the record contains sufficient evidence to support the Commission's finding that Watson's depression "existed prior to her work-related accident" and is "wholly separate and apart from [the] chronic pain" caused by her work-related injury.

Similarly, with respect to Watson's migraines, her expert witnesses provided equivocal testimony. One expert conceded that she was unsure whether Watson's migraines were caused by her workplace injury and resulting chronic pain. The other expert testified that Watson's workplace injury exacerbated an existing migraine disorder but did not provide any details about how he examined her previous migraines to confirm that her condition was worse now than it had previously been before her work-related injury.

Again, in light of the weaknesses in the underlying evaluations and reasoning of these experts, the Commission, in its role as fact finder, was entitled to discredit their testimony. *See Hassell*, 362 N.C. at 306, 661 S.E.2d at 715. Thus, there was

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competent evidence in the record supporting the Commission's finding that there was insufficient evidence "correlating [Watson's] migraine headaches to her [workplace injury]." Accordingly, we reject Watson's challenge to the Commission's causation findings and affirm the Commission's opinion and award.

**Conclusion**

For the reasons set out above, we affirm the Industrial Commission.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).